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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/552,156

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Andreas Meinke

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12/05/2008

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EXAMINER

BASKAR, PADMAVATHI

ART UNIT

PAPER NUMBER

1645

MAIL DATE

DELIVERY MODE

12/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/552,156	Applicant(s) MEINKE ET AL.	
	Examiner Padma V. Baskar	Art Unit 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38,41,43-46 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38,41,43-46 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendment

1. Applicant's amendment filed on 8/19/08 is acknowledged.

Status of claims

2. Claims 1-37, 39, 40, 42, 47 and 49-68 are cancelled.
Claims 38, 41, 43 and 44 have been amended
Claims 38, 41, 43-46 and 48 are pending and are under examination.

Specification Informalities withdrawn

3. In view of amendment to the specification, the Specification Informalities have been withdrawn.

Claim Rejections - 35 USC 112, first paragraph withdrawn

4. In view of amendment to the claims and cancellation of claim 40, the new matter rejection of claims 38, 41, 43-46 and 48 under 35 USC 112, first paragraph is withdrawn.

35 USC 112, first paragraph Claim rejection maintained

5. The rejection of claims 38, 41, 43-46 and 48 under 35 U.S.C. 112, first paragraph under 35 U.S.C. 112, first paragraph is maintained as set forth in the previous office action.

Applicant states 8/19/08 that applicants have amended the claims to recite specifically-disclosed antigenic peptide fragments identified with reference to specific amino acids of an explicitly-disclosed polypeptide identified by SEQ ID NO: 243 .

Applicants argument are considered but found to be nonpersuasive because applicant is not claiming "a purified and isolated hyperimmune serum-reactive *S. pneumoniae* antigen, wherein the antigen consists of amino acids 1-285 of SEQ.ID.NO:243" or "wherein the antigen consists of amino acids from 15-37, 32-57, 101-121, 115-135, 138-158, 152-172, 220-242 or 236-258 of SEQ ID NO. 243". The scope of the claims as claimed are much broader than the specification because the specification teaches only a purified and isolated hyperimmune serum-reactive *S. pneumoniae* ,said antigen consisting of amino acids 1-285 of SEQ.ID.NO:243 is immunologically reactive with sera obtained (see Table 1) from infected

Art Unit: 1645

individuals. Similarly antigenic peptide fragment consisting of amino acids from 15-37, 32-57, 101-121, 115-135, 138-158, 152-172, 220-242 or 236-258 of SEQ ID NO. 243" (Table 2) is immunologically reactive with sera obtained from infected individuals.

Claim Rejections - 35 USC 102 maintained

6. The rejection of claims 38, 41, 43, 44-45 and 48 under 35 U.S.C. 102(b) as being anticipated by Massignani et al WO 02/077021 is maintained as set forth in the previous office action.

Applicants argues (8/19/08) that applicants disagree with the Action's interpretation of the disclosure of the Massignani reference. Applicants have amended the claims to recite specifically-disclosed antigenic peptide fragments identified with reference to specific amino acids of an explicitly-disclosed polypeptide identified by SEQ ID NO: 243 and claims have also been amended to recite that each of these explicitly-recited fragments comprises an antigenic epitope that is capable of causing an immunological response in a human, wherein the fragments "consist of" the amino acid sequence disclosed in the specification.

Applicant's argument is considered but found to be nonpersuasive because the art teaches the polypeptide and antigenic fragments as recited in the claims. Claims are not limited to specific antigen, said antigen consisting of amino acids 1-285 of SEQ.ID.NO:243" or amino acids from 15-37, 32-57, 101-121, 115-135, 138-158, 152-172, 220-242 or 236-258 of SEQ ID NO. 243". The art discloses an antigen comprising an isolated *S. pneumonia polypeptide or peptide fragment that is a peptide comprising an* antigenic fragment, SEQ.ID.NO: 4652 that is 100% identical to the claimed 1-285 of SEQ .ID.NO:243. As the art also discloses a peptide comprising an antigenic fragment 15-37, 32-57, 101-121, 115-135, 138-158, 152-172, 220-242 or 236-258 of SEQ ID NO. 243, it is expected to bind to the hyperimmune serum as it is known in the immunology art that even a peptide with 5-10 amino acids induce an immune response. Therefore, products of identical chemical composition can not have mutually exclusive properties. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. In re Spada 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). See MPEP 2112.01.

Art Unit: 1645

Remarks

7. No claims are allowed.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

9. Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Fax Center, which receives transmissions 24 hours a day and 7 days a week. The transmission of such papers by facsimile must conform to the notice published in the Official Gazette, 1096 OG 30, November 15, 1989. The Right Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PMR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PMR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Padma Baskar Ph.D., whose telephone number is ((571) 272-0853. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 6.30 a.m. to 4.00 p.m. except First Friday of each bi-week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor and Robert Mondesi on 571)272-0956.

Respectfully,

/Padma V Baskar/

Examiner, Art Unit 1645

/Robert B Mondesi/

Supervisory Patent Examiner, Art Unit 1645